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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,758

05/19/2005

Patrik Borg

BJER103

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26833

7590

12/21/2006

ROBERT S. SMITH

1131-0 TOLLAND TURNPIKE

SUITE 306

MANCHESTER, CT 06040

EXAMINER

CONSILVIO, MARK J

ART UNIT

PAPER NUMBER

2872

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/535,758	Applicant(s) BORG, PATRIK	
	Examiner Mark Consilvio	Art Unit 2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 19-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/13/2006</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 09/13/2006 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 33 recites the limitation "the mirror." The claim is ambiguous since this could refer to either the first or second mirror.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19-25, 27, 29, and 31-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Phillips (GB Patent No. 567,520).

With respect to claim 19, Phillips discloses a device to make it possible for a person to see an object located below his eyes, with his eyes directed substantially forward, comprising a first (M) and a second (M2) mirror arranged such that they render an optical path reaching from the object towards a reflective surface of the first mirror (M), then further to a reflective surface of the second mirror (M2), and then to the eyes (E), characterized in that the device comprises a framework (1, 10), and is designed to, at positioning of the framework and the mirrors in front of and at a distance from the body of a person having his upper part of his body substantially supine, and having his eyes directed substantially forward, show a position in front of the upper part of his body, wherein the framework (1, 10) is arranged to hold the second mirror (M2) at a farther distance from the person than the first mirror (M) at said positioning in front of the person. The examiner notes that the limitation, "to, at positioning of the framework and the mirrors in front of and at a distance from the body of a person having his upper part of his body substantially upright, holding his hands in a position in front of the upper part of his body, and having his eyes directed substantially forward, show the hands of the person" is an intended use-type limitation. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Since the invention of Phillips is capable of being rotated for a viewer in an upright position to, holding his hands in a position in front of the upper part of his body and having his eyes directed substantially forward, show the hands of the person, the limitation is met by the invention of Phillips.

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With respect to claim 20, Phillips discloses that the mirrors (M, M2) are arranged vertically adjustable in relation to the framework (p. 1, lines 94-99).

With respect to claim 21, Phillips discloses that each of the mirrors (M, M2) is arranged adjustable to different angular positions relative to the framework (1, 10) and thus relative to a person being in a fixed position (p.1, lines 64-72).

With respect to claim 22, Phillips discloses that the mirrors (M, M2) are arranged such that the distance between them is adjustable (p. 1, lines 74-80).

With respect to claim 23, Phillips discloses that the mirrors (M, M2) are arranged vertically adjustable in relation to each other (p. 1, lines 74-80).

With respect to claim 24, Phillips discloses a holding member (5) arranged to hold the mirrors (M, M2) and that the holding member is arranged connected to the framework (1, 10).

With respect to claim 25, Phillips discloses that the holding member (5) is arranged vertically adjustable relative to the framework (p. 1, line 104 – p. 2, line 4).

With respect to claim 27, Phillips discloses that the holding member (5) is arranged to be rotatable in relation to the framework (1, 10) around an axis of rotation and that the mirrors (M, M2) are arranged on opposite sides of said axis, such that when rotating in one direction around said axis, the first mirror (M) is raised as the second mirror (M2) is lowered, and when rotating in the other direction around said axis, the first mirror (M) is lowered as the second mirror (M2) is raised, wherein the mirrors are vertically adjustable in relation to each other by rotating the holding member (fig. 2).

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With respect to claim 29, Phillips discloses a locking member (6) arranged to lock the axis of rotation and thus to lock the angular position of the holding member (5) relative to the framework (1, 10).

With respect to claim 31, Phillips discloses that the distance between the mirrors (M, M2) is adjustable by at least one of the mirrors being arranged displaceable in relation to the holding member (5) (p. 1, lines 74-80).

With respect to claim 32, Phillips discloses that said at least one mirror (M, M2) is arranged rotatable in relation to the holding member (5) around an axis of rotation (p. 1, lines 80-90).

With respect to claim 33, Phillips discloses that it comprises at least one locking element (2) arranged to lock the angular position of the mirror relative to the holding member (5) and that the locking element also is arranged to lock the displacement of the mirror relative to the holding member and thus at the same time lock both the position and the angular position of the mirror relative to the holding member (fig. 2).

With respect to claim 34, Phillips discloses that the holding member (5) shows longitudinal grooves (3) for the displacement movement of the mirror relative to the holding member, wherein the axis of rotation of the mirror is displaceable along the groove (p. 1, lines 74-90).

With respect to claim 35, Phillips discloses that the mirrors (M, M2) are arranged detachable from the holding member (5).

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26, 28, 30, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips (GB Patent No. 567,520).

With respect to claim 26, Phillips discloses all the limitations of claims 19, 24, and 25 as stated supra. Phillips does not expressly disclose that the framework shows longitudinal groove for the displacement movement and that the groove extends substantially vertically. However, it is well known in the art that vertically extending longitudinal grooves may be used for the displacement movement (see, e.g., van den Berg (US Patent No. 4,531,813)). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to replace the telescopic system of Phillips with a vertically extending longitudinal groove for the displacement movement. One of ordinary skill in the art would have been motivated to do this allow a larger range of vertical motion.

With respect to claim 28, Phillips discloses that said axis of rotation for the holding member (5) coincides with a vertical tube, wherein the axis of rotation is displaceable along the vertical tube. Hence, the modification of Phillips with the known prior art as applied regarding claim 26 suggests a holding member coincides with the groove, wherein the axis of rotation is displaceable along the groove.

With respect to claim 30, Phillips discloses all the limitations of claims 19, 24, 27, and 29 as stated supra. Phillips does not expressly disclose that said locking member (6) also is arranged to lock the vertical displacement of the holding member (5) and thus at the same time lock the position and the angular position of the holding member relative to the framework (1, 10). However, locking means that lock vertical and angular position are well known in the art (see, e.g. Hawkins (US Patent No. 4,759,621)). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to replace the locking means of Phillips with a locking member that locks vertical and angular position of the holding member relative to the framework. One of ordinary skill in the art would have been motivated to do this to combine the function of two separate locking members, thereby reducing the number of parts and steps required for adjustment.

With respect to claim 36, Phillips discloses all the limitations of claim 19 as stated supra. Phillips does not expressly disclose that the first mirror is a confrontation mirror arranged such that it is possible to see through the mirror. However, half-silvered and semi-transparent mirrors are well known in the art. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to replace the first mirror of Phillips with a semi-transparent mirror to allow a viewer to see in multiple directions simultaneously.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Consilvio whose telephone number is (571) 272-2453. The examiner can normally be reached on Monday thru Friday, 8:30 am to 5:00 pm.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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